HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 388 (S/S) Year 2004

Vijay Kumar

Versus

State and others.

Approved for reporting

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~~Not approved for reporting .~~

Date of decision 27.04.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 388 of 2004 (S/S)

Vijay Kumar …… Petitioner

Versus

State of Uttaranchal and others …… Respondents

Ms. Jyotsana, learned counsel for the petitioner.
Mr. Nand Prasad, learned Standing Counsel for the State.

Hon. Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for issuance of a writ of mandamus directing the respondents to provide the benefits of one month extra pay to the petitioner as provided in the Government Order dated 7th December 1979.

The brief facts giving rise to the present writ petition according to the petitioner are that he is an inspector of Police and is presently posted as Station House Officer, Kotwali Jawalapur, District Haridwar. During the period 17.07.1997 to 18.07.2002 the petitioner was posted as Inspector in Anti Corruption Organization, C.B.C.I.D., Haldwani, Nainital as non gazetted police officer and was being treated to be on duty for all the time and he did not avail the holidays of Second Saturdays and Sundays and any other gazetted holidays. Petitioner has submitted that being aggrieved on account of inaction of the respondents by non discharging their duties by no paying on e month extra pay, special pay allowances, special pay, fixed house rent allowance and motor subsidy form the period 17.07.1997 to 18.07.2002 he has filed the present writ petition.

The petitioner has relied upon the Government Order issued on 7th December 1979 in which it has been provided that one month extra pay in lieu of gazetted holidays, second Saturdays and Sundays which are not availed by the non gazetted members of the U.P. Police force of the rant of Inspector rand Sub Inspector including the Platoon Commander and the Company Commander of the P.A.C. shall be allowed to him. The said Government Order is quoted below:-

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fnukd 7 fnlEcj 1979

fo"k;% ifyl foHkkx d vjktif=r vf/kdkfj;k o deipkfj;k dk jktif=r vodk'k] jfookj o f}rh; 'kfuokj dk miHkkx u iku d ,ot] o"k e ekun; dh LohdfrA

mijkDr fo"k; ij vkid i= l0 3 d&400&79] fnukd 17&9&79 d lUnHk e ;g fuonu dju dk fun'k gvk g fd jkT;iky egkn; m0i0 ifyl lxBu e fu;Dr leLr dkULVcy o gM dkULVcy] Qk;j lfol e fu;Dr led{k deipkfj;k dk lfEefyr djr g, rFkk tuinh; 'kk[kk ¼th0 vkj0 ih0 lfgr½ e fu;Dr ukxfjd o l'kL= ifyl d lgk;d mi fujh{kdk] mi fujh{kdk rFkk fujh{kdk ftue ih0 ,0 lh0 d lykVu dekMj o diuh dekMj Hkh lfEefyr g ftud dk;ky; ekg d f}rh; 'kfuokj] jfookj o jktif=r vodk'k e lk/kkj.kr;k [kyr jgr g] dk mudh dfBu lokvk dk n f"Vxr j[kr g, iR;d foRrh; o"k e ,d ekg d oru d cjkcj ekun; fn;s tku dh Lohdr inku djr gA

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3& mijkDr lfo/kk mUgh vf/kdkjh o deipkfj;k dk n; gkxh ftUgku ,d o"k dh vgidkjh lsok ijh dj yh gkxhA ,d o"k e ekun; dk vx.ku 1 vizy ls vxkeh 31 ekp rd d ey oru]

egxkb HkRrk rFkk vfrfjDr egxkb HkRrk d vkSlr ij fd;k tk;xk vkj tk depkjh iR;d foRrh; o"k dh ikjfEHkd frfFk 1 vi;y ,o vfUre ekg ekp dh igyh rkjh[k dk lokjr gS] mUgs 12 ekg dh lok d vk/kkj ij ekg ekp esa Hkxrku fd;k tk;xkA 1 o"k d e/; lok eDr gkus oky ekp vf/kdkfj;k o depkfj;k dk lekuikfrd njk ij ;g lfo/kk n; gkxhA bl izdkj tk vf/kdkjh o"k d nkjku fdlh le; lok vkjEHk djr gS mUgs gh ;g Hkxrku lok vof/k dk /;ku esa j[kr gq, lekuikfrd nj ij fd;k tk;xkA pkyw foRrh; o"k esa tk depkjh 31 ekp 1970 dk viuh 1 o"k dh lok i.k dj jgs gS vkj 1 vi;y 1979 l dk;jr gS] mUgs ,d ekg d oru d cjkcj mijkDrku lkj ekun; vueU; gkxk rFkk tk o"k d chp esa lok fuoRr gk x;s gS vFkok ftUgkus 1 vi;y 1970 d ckn lok vkjHk dh gS] dk lekuikfrd nj ij ekun; dk Hkxrku fd;k tk;xkA

Petitioner has referred the certificate dated 6th April 2004 issued by the Khandadhikari, Criminal Investigation Department, Haldwani, Nainital wherein it was mentioned that the petitioenr has not availed the benefits as admissible under the said Government Order.

On the other hand, Mr. Nand Prasad, learned Standing Counsel for the State has submitted that the petitioner has availed second Saturdays and Sundays and therefore he is not entitled for the benefit of the Government Order dated 7th December 1979.

The petitioner has also referred the judgment of the learned Single Judge of Allahabad High Court dated 4th April 2001 were the learned Judge after relying upon the judgment in writ petition No. 6700 (S/S) of 1986 (K.K. Mishra and others Vs State of U.P. and others) made the following directions:-

"In view of the above this Court is of the opinion that the judgment and order passed in writ petition No. 6700 (S/S) of 1986 is fully applicable in the instant matter.

Therefore, the writ petition is allowed with the direction to the opposite parties to provide the benefits of one month's extra pay to the petitioners as provided in the Government Order dated 07.12.1979, copy of which is contained in annexure No. 1 to the writ petition and the benefit of judgment and order, passed by this Court in writ petition No. 6700 (S/S) of 1986, be also given to the petitioners by the respondents.

There will be no order as to costs."

In writ petition No. 6700 (S/S) of 1986 it has been held as under:

"The main question which arises for consideration is that who would be the better judge to decide these questions. The highest police officials from the stage of the Deputy Inspector General of Police to Inspector General of Police have indicated certain facts from which it transpires that they perform similar duties. They are governed by the same Act and Regulation. In the matter of discipline they are governed by the same disciplinary regulations when the options were taken form them they were assured that they would be treated equally with the persons of the police staff and paid equal allowances etc. There is no reason as to why after they opted for new cadre on the basis of certain assurances and promises they should be denied the amenities and facilities which are available to their counterparts working on executive side. There is no reason for this Court to discredit what the highest police officials of the State had stated. Some of the persons had made representations. The decision on the representation also does not indicate as to what is their dis-familiarity in the cadre of ministerial staff, for which the facilities and

amenities granted to the executive staff can be denied to them. This case cannot escape the sweep of Article 14 and 16 of the Constitution of India which abhor discrimination of any sort whether it is in the matter of pay scale, special pay or allowance and the like nature. Although the petitioners claim that they should be given parity in the mate of aforesaid allowances form the date, the persons working on executive side of the police officers are entitled to but for the reason that it would cost great strain on the public exchequer and after considering financial strains which the State of U.P. is having today, the order of this Court would be prospective in operation.

In view of what has been indicated hereinabove the writ petition succeeds. A writ in the nature of certiorari is issued quashing the order dated 8.5.85 contained in annexure -19 to the writ petition. A writ in the nature of mandamus commanding the opposite parties to grant special work allowance, special pay, fixed house rent allowance, motor subsidy and one month's extra pay to the petitioners who are working in the ministerial cadre of U.P. Police Force in the Intelligence Department at par with the equivalent category of officers / officials belonging to the Executive Cadre working in the Intelligence Department with effect from today is also issued."

The controversy, therefore, with regard to the extra payment in pursuance of the Government Order of 1979 has not been disputed by the learned Standing Counsel.

Liberty is given to the petitioner to made a proper representation before the respondent Authorities. The said Authorities shall decide the claim of the petitioner with regard to

benefit of one month extra pay to the petitioenr in accordance with the G.O. date 7th December 1979 and in accordance with the judgment and order passed by the Hon'ble Allahabad High Court in similar writ petition No. 6700 (S/S) of 1986. The respondents shall release the payment to the petitioner in accordance with the said G.O. and similar writ petition of Hon'ble Allahabad High Court. The claim of the petitioner base don his representation shall be released within a period of six weeks form the date of production of the certified copy of this Order.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

The connected writ petition No. 544 (S/S) of 2001 may be listed in date course.

(Rajesh Tandon, J.)

Dt. 27.04.2004
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